IN THE

SUPREME COURT

OF THE

UNITED STATES.

December Term, 1867. No. 140.

HANNIBAL GREEN, PLAINTIFF IN ERROR,
vs.
MORRIS S. VAN BUSKIRK, *et al*, DEFENDANTS IN ERROR.

Points of Defendants in Error.

STATEMENT.

On November 3, 1857, John W. Bates, a citizen and resident of the State of New York, being indebted to the defendants in error, who (except Woodbury, of Ohio,) were also citizens and residents of that State, sold to them, as security for the payment of such debts, certain property of his, amongst which were 41 safes, then in Chicago, Illinois, in possession of one Stowell, who wrongly claimed them as his—(pp. 5, 6.)

The sale was made in New York, and being *bona fide*, by the common and statute law of that State (and as adjudged in this case), it vested the title to the property immediately in the vendees, without an actual delivery—(pp. 6, 9, 10.)

The vendees duly proceeded to take possession of the property, but before getting possession of said safes, the plaintiff in error, also a citizen and resident of New York, and a creditor of Bates, on November 5, 1857, and after title had thus passed *lege domicillii*, commenced suit upon his debt, against Bates, in Illinois, and attached said safes, as yet being Bates's property: And, after recovering judgment against him for such debt, issued execution thereon, and sold the safes as the property of Bates.

The vendees of Bates (the defendants in error), after demand of the safes, and refusal, in New York, where the parties resided, brought suit for their value in New York Supreme Court. To this suit the plaintiff in error pleaded (p. 3) that the safes, at the time he took them, were Bates's property, and that he seized and sold them as such by due process of law, in a suit against him, in Illinois.

The trial was before the Court at Circuit, and the proof was (1st), Bates's original ownership; (2d), the sale on November 3, and its good faith; (3d), the demand and refusal; (4th), value; (5th), the law of Illinois, as evidenced by the cases of Martyn *v.* Dryden, and Burnell *v.* Robertson, and by the Statutes; (6th), the Illinois suit against Bates, and the process against his property.

Upon the facts, as specially found by the Court, the Court decided, as its conclusions of law respecting the sale, that "the law of the State of New York is to govern the transaction" (p. 10), and not that of Illinois; that by the New York law of sales "the title to the safes passed on the execu-

tion and delivery of the instrument" of November 2 (p. 9); and, therefore, as the safes had thus passed to Bates's vendees, that the subsequent attachment against his property did not reach them, and that such vendees and owners were entitled to judgment.

As regards the Illinois law of sales, and the effect of the Illinois suit and process, such decision prevented any occasion for inquiring about those facts, and, therefore, no fact was found in relation thereto, and none was presented, by the record, to the appellate Court.

To this decision upon the question of ownership under the sale of November 3, the plaintiff in error excepted, and appealed to the Supreme Court, at General Term, where the judgment was affirmed. An appeal was again taken to the Court of Appeals, and this decision there reviewed, and that Court affirmed the judgment of the General Term. Then the decision of affirmance by the Court of Appeals was brought here for review, under the 25th section of the Judiciary Act, upon the allegation that full faith and credit were not given therein to the Illinois proceedings against Bates.

At December Term, 1866, a motion was made, in this Court, to dismiss the writ of error, but the motion was denied, on the ground, as it would seem, that the plaintiff in error claimed for the Illinois suit and process more than was accorded to them: And the decision of the Court of Appeals now comes before this Court, upon its merits, and for a decision as to the alleged violation of a Constitutional right.

POINTS.

I. The primary question was as to the ownership of the safes when the attachment process was executed; and this question wholly depended upon the completeness and effect of the previous sale, as determined by the law of sales rightly applicable thereto.

(*a.*) The defence was that the safes were Bates's and were seized and sold as his, under process of attachment and execution in a suit against him. Thus, the leading question was as to the ownership at the time of the attachment—as to the previous state of the title. If the safes were then Bates's the attachment took effect upon his title; but if they had already passed to his vendees, then the attachment process could not reach them, and their seizure under it was a seizure of A's property under process against B's. And whether the safes had passed to his vendees, by the sale, or remained Bates's as against his creditors, was a question antecedent to the attachment, and depending entirely upon the effect of the previous sale, as determined by the law of sales applicable thereto. If the New York law governed the sale, and by that law the sale vested the title in the vendees without delivery, then the vendees were owners, and *their* property was wrongly seized under process directed against Bates's. But if the Illinois law governed the sale, and by that law such sale was incomplete, as against creditors, for want of possession by the vendees, then the safes

were Bates's as against his attaching creditor, and were rightly seized as his. These positions are elementary and undeniable.

Thus the question was as to the ownership of the safes, when the plaintiff in error was about to seize them, and that must depend on the validity and effect of the previous sale, and precede every other question.

(*b.*) Such always is, and must be, the primary question between an alleged owner and an attaching or execution creditor of a third party: And the process, in every such case, must depend, for its effect, upon the solution of the question.

Thus, in Bholen *v.* Cleveland (post), says Justice Story: "The whole controversy turns upon the single point, where was the property in the goods at the time the trustee process was served." "The assignment worked an immediate transfer of the ownership:" "At the time of the service of the trustee process, the goods were no longer the property of the Holdball's. They had transferred them to the plaintiffs."

So in Van Buskirk *v.* Hartford Fire Insurance Company (post), Storrs, J., says (p. 588): "The effect of the assignment was to vest in the assignees a perfect title to the debt in question, to all intents and purposes, not only against the assignor but subsequent purchasers and attaching creditors; and, therefore, to leave no right or interest in it remaining in the assignor, upon which a subsequent transfer or attachment could operate."

Indeed, in every case between an adverse

claimant and an attaching or execution creditor, this question of previous ownership is necessarily recognized as the leading and test question. (See citations under Point V.)

(*c.*) That the question of ownership was thus antecedent to and independent of the attachment, has been expressly settled by this Court in Buck *v.* Colbath, 3 Wallace, 335. In that case Colbath sued for property which Buck, as U. S. Marshal, had seized under an attachment issued by a Federal Court in a suit against a third party; and Buck justified under the attachment. In delivering the Opinion of this Court, Mr. Justice Miller fully explains the distinction between process directed against specific property, and process directed generally against the property of a party (as in that case and this one) where "the officer has a very large and important field for the exercise of his judgment and discretion—first, in ascertaining that the property on which he proposes to levy is the property of the person against whom the writ is directed:" And then the learned Justice clearly demonstrates, as to the latter class of writs, that their protection depends upon the ownership of the property seized, and that any question of ownership is entirely independent of the process and *dehors* such suit. Thus: "The proceeding in the attachment suit did not involve the question of the title of Colbath, defendant in error, to the property attached. The whole proceeding in that Court, ending, as it might, in a judgment for the plaintiff, an execution and sale of the property attached, and satisfaction thereby of the plaintiff's

debt, may be, and in such cases usually is, carried through without once requiring the Court to consider the question of title to the property. That is all the time a question between the officer or the purchaser at his sale on the one side, and the adverse claimant on the other There is no pretence, nor does any one understand, that any thing more is involved or concluded by such proceedings than such title to the property as the defendant in attachment had when the levy was made. Hence it is obvious that plaintiff in error is mistaken when he asserts that the suit in the Federal Court drew to it the question of title to the property, and that the suit in the State Court against the Marshal could not withdraw that issue from the former Court. No such issue was before it, or was likely to come before it, in the usual course of proceeding in such a suit."

So, in this case, the plaintiff in error is, in like manner, mistaken in asserting that the Illinois suit drew to it, or involved, the question of ownership raised in this suit, and between these parties: And that question necessarily depends upon the effect of the previous sale, as determined by the law of sales rightly applicable thereto.

II. Wherever the issue between these parties had been tried, and however it had been raised, this question of previous ownership must have been the test question, and been thus determined.

(*a.*) Had the defendants in error interposed

their claim, and tried the title as a side issue, in course of the Illinois suit against Bates, it is apparent that such question of title would have been the only one, and must have depended exclusively upon the validity and effect of the previons sale, as tested by the law of sales properly applicable to it.

So, had this suit been brought in Illinois, this question would have been the leading one, and would have depended, as it did in New York, upon the law of sales of New York, and of Illinois, and upon which law should govern.

So, too, had Bates sold the safes to plaintiff in error, on November 5, to pay his debt, or otherwise, and plaintiff in error had got possession under such sale, instead of under the attachment process, the question, whether tried in New York or Illinois, would still have been the same, and been determinable in the same way. Indeed, in such case, this question of title under the previous sale, as governed by the law of sales applicable thereto, would be the only one. And, as the effect of an attachment is only to place the creditor on the footing of a *bona fide* purchaser, this aptly illustrates the dependence of this question of ownership upon the effect of the previous sale, as thus determined, and its independence of any question about the subsequent attachment.

III. This leading question of previous ownership, and as to the effect of the sale, as against creditors, necessarily assumed that the Illinois suit

and process had their *full effect* of establishing the plaintiff in error in the legal position of attaching and execution creditor of Bates, and entitled as such, to contest such sale.

(*a.*) It was not alleged, or at any time pretended, that the Illinois suit involved or determined any question of ownership, or any question between these parties, or that the Court there even knew that its process had been used to seize or sell these safes. And any such claim or pretence would have been idle. (Buck *v.* Colbath.)

The defence, as already stated, was ownership by Bates, and seizure and sale of the safes as his, under process in suit against him; and these two allegations together constituted one defence. So that, what was thus claimed for the Illinois suit and process, was the acquisition thereby of Bates's alleged title, as against creditors.

And this was the *full effect* of such suit and process; for the judgment only adjudged the debt against Bates, and the attachment and execution were only process for its collection, directed generally against Bates's property.

But all this effect of such suit and process was evidently *assumed* in this very question of previous ownership: For unless plaintiff in error were regarded as having acquired whatever title remained in Bates, this question would not have been in issue, because title in a third party was no defence: And unless plaintiff in error were regarded as such adjudged creditor, and as armed with *lawful* process against Bates's property, this question of previous ownership, and of the effect

of the sale as against creditors, would not have arisen, and been considered, and disposed of.

And all this was so assumed without any question. Indeed, if any question about the Illinois suit and process had been possible, yet, for the purposes of disposing of this primary question of Bates's title, this effect of the suit and process must needs have been thus assumed: And then, if that question were decided in favor of his title, any question about the validity or effect of the suit and process would have its subsequent place.

(*b.*) Any claim that the Illinois suit and process had any further effect, or any effect upon the question of ownership, is untenable. (Buck *v.* Colbath.) It would be to claim that the seizure of the safes as Bates's made them his—that whatever property is seized under process is thereby made subject to it, and lawfully seized.

IV. Thus, this question of ownership at the time of the attachment, was not one between the New York law of sales, and the Illinois suit and process, but between the New York law of sales and that of Illinois.

(*a.*) This appears from the preceding Points; and also from every decision concerning any such conflict of laws. (See citations under Point V.) But as plaintiff in error must needs avoid this true issue, and present a supposed one, between the New York law of sales and the Illinois suit and process, it will be noticed further.

(*b.*) Plaintiff in error asserts that the seizure was lawful by the law of Illinois: and he asserts this, as if such supposed lawfulness was somehow determined by the proceedings there, and thus would fain bring the New York law of sales into supposed conflict with such proceedings. Now, this assertion is fully answered by the fact, that the record does not show that the seizure was thus lawful, and therefore, did not present to the Court of Appeals, any question based upon any such state of things. But waiving this just now, and assuming, for the present, that such seizure was lawful, clearly, it was lawful, not because the Illinois suit adjudged it so (for it did not), nor because the attachment could reach any property but Bates's (for it could not), but only on the theory that the Illinois law of sales required delivery to transfer the title, as against creditors, and also that the law there, instead of that of New York, governed the effect of the previous sale—on the theory that the safes, under the law governing the sale, remained the property of Bates, as against creditors, and thus came within the reach of the attachment directed against his property.

Again: If such seizure was thus lawful by the law of Illinois, the question is—By what law of Illinois was it lawful? And to this the only answer can be—By the Illinois law concerning the previous sale, and its effect, as against creditors. Or, if such assertion be in this form, that by the law of Illinois the safes were liable to the attachment, the same question arises—By what law were they thus liable? And to this, the same answer must follow: For it cannot be pretended

that the safes were thus liable to seizure, unless they were Bates's, or that the Illinois suit determined whose property the safes were, or any thing respecting them. (Buck *v.* Colbath.)

(*c.*) The plaintiff in error would also regard the Illinois suit and process as a proceeding *in rem*, and as relating to the title; and thus also, would bring the New York law of sales into supposed conflict with such proceedings. But it is apparent that the Illinois proceedings were no more *in rem* than any seizure under an attachment or execution is a proceeding *in rem*. The Illinois Court had jurisdiction only of the parties to the suit there, and of the question of *debt* involved in it, and neither had, nor assumed to have, any jurisdiction whatever of these parties, or of this question of ownership, or in any way of the *safes*, and did not even know that the safes had been seized, or that there was any such property. (Buck *v.* Colbath.)

Whether the Illinois suit against Bates was commenced by service on him or his co-defendant, or by attachment, as against a non-resident, does not appear. But if by attachment, and if the process was not served on other property, and there was no appearance, then jurisdiction of the suit wholly depended upon the safes being Bates's—upon a fact *dehors* such suit: And it would be arguing in a circle to say that the Court had jurisdiction because the safes were Bates's, and that the safes were Bates's because the Court had jurisdiction, &c.

In a suit for debt against a non-resident, unless the defendant be personally served or appear, only the property attached can be sold under the execution; for the Court, in such case, has jurisdiction only *pro tanto;* and such a suit, therefore, somewhat resembles one *in rem*, because its reach is thus limited to the *rem* attached, just as a suit *in rem* concerns only the *rem* which is its *subject matter*. But the suit and judgment are nevertheless *in debt*, and not *in rem*, and the Court adjudges nothing and knows nothing about the *rem* attached. And to call a seizure of property under general process, a proceeding *in rem*, would be to misstate the fact, to confuse terms, and to disregard the clear distinction pointed out in Buck *v.* Colbath. Suits and proceedings *in rem* are not against *persons* but against *specific property*. (See Rules 2, 4, 8, 9, 10 of Rules promulgated by this Court; Law's U. S. Courts, pp. 532–541.)

Of course, as against Bates, the jurisdiction of the Illinois Court would be undeniable, for a suit by him for the property attached would presuppose title, and consequent jurisdiction. But as against these third parties, the question of title in Bates, when the safes were seized, is vital to the very jurisdiction, and precedes every other. If this were not so, but the suit and process could somehow be regarded as condemning the safes, then if the property of the Judge who allowed the attachment, had been seized under it, the process would, in like manner, have condemned it; and it could be said, with as much force as in this case, that to award him his property, or payment for it, would violate the sanctity of the process, and

the Federal Constitution. Nor is it any answer to this to say, that the Judge's property was not liable to the attachment; for the point is, that if the suit and process can, in this case, be supposed to have determined the liability of the property seized to the process, then they equally would in the other. And thus, the question of such liability—of the safes being Bates's, as against creditors, or the property of the defendants in error, at the time of their seizure—necessarily goes back of the process and its effect, to Bates's original ownership, and to the effect of the previous sale by him, as determined by the law of sales of New York on the one hand, or that of Illinois on the other. Thus too, is illustrated the error of regarding the judgment as proving any thing but the debt which it adjudged—the fact that plaintiff in error was a creditor of Bates—or the process as any thing but lawful process directed generally against Bates's property; and also the radical error of disregarding the elementary principle that suits only bind the parties to them, and upon the questions involved in them.

IV. The New York Courts rightly decided that the sale by Bates was governed by the law of sales of New York: For a voluntary transfer of personal property is governed everywhere by the law of the owner's domicil—except, perhaps, as against citizens of the local situation.

Sill v. Worswick, 1 H. Bl., 690; 2 Kent's Com., § 376, p. 428; Parsons v. Lyman, 20 N. Y., 103; Burlock v. Taylor, 16 Pick., 335; Story's Conflict of Laws,

§§ 376, 379, 380, 383; Story's Life and Letters, 1 vol., 380; Ogden v. Sumners, 12 Wheaton, 213; Taylor v. Boardman, 25 Ver., 589; Hunter v. Potts, 4 D. & E., 182; Holmes v. Remsen, 20 John's Rep., 222; Johnson v. Hunt, 23 Wen., 87; Milne v. Morton, 6 Binney, 353; Hoyt v. Thompson, 5 N. Y., 320; Whipple v. Thayer, 16 Pick., 25; Daniels v. Willard, 16 Pick., 36; Burlock v. Taylor, *ibid* 335; R. I. Cent. Bk. v. Danforth, 14 Gray, (Mass.) 123; Van Buskirk v. Hartf. Fire Ins. Co., 14 Conn., 583; Sanderson v. Bradford, 10 N. H., 260; Noble v. Smith, 6 R. I., 446; Taylor v. Boardman, 25 Ver., 589; Bholen v. Cleveland, 5 Mason, 175; Caskie v. Webster, 2 Wallace, Jr., 131; Burrill on Assigts., 2 ed., 370. 37 Ill 60 Adam v Robins

34 Ms Merrick v Van Santvoord

(*a.*) This general doctrine is of great antiquity; and is essential to commerce.

In Sill v. Worswick, 1 H. Bl., 690, Lord Loughborough said: "It is a clear proposition, not only of the law of England, but of every country in the world, where law has the semblance of science, that personal property * * is subject to that law which governs the person of the owner, both with respect to the disposition of it, and with respect to the transmission of it, by succession or by the act of the party."

Chancellor Kent says of this doctrine, (2 Kent's Com., § 376, p. 428): "Huberus lays down this to be the common and correct opinion, * * * and Bynkerhoeck says, the principle had become so well established that no one dared to question it."

In Parsons v. Lyman, 20 N. Y. Rep, 103, Justice Denio (p. 112) affirms this doctrine as "an established doctrine, not only of international law, but of the municipal law of this country."

In Burlock v. Taylor, 16 Pick., 335, says Ch. J. Shaw: "Sales and dispositions of property (personal) made in one state or country are respected in others, and it would hardly be possible that commerce or intercourse among states could exist without this."

Justice Story, in his Conflict of Laws, says, (§ 376): "The general doctrine, held by nearly all foreign jurists, is that the right and disposition of movables is to be governed by the law of the domicil of the owner, and not by the law of their local situation." In § 379 he gives the reasons for this doctrine, and then says: "A sense of general utility, therefore, must have first suggested the doctrine, and as soon as it was promulgated, it could not fail to recommend itself to all nations by its simplicity, its convenience and its enlarged public policy." (§ 380): "It has so general a sanction among all civilized nations, that it may now be treated as a part of the *Jus Gentium.*" "The same doctrine has been constantly maintained both in England and America with unbroken confidence and general unanimity." Again, (§ 383): "The laws of the owner's domicil should, in all cases, determine the validity of every transfer, alienation, or disposition made by the owner, whether it be *inter vivos* or *post mortem.*" And in a subsequent letter to Chancellor Kent on this subject, (Story's Life and Letters, 1 vol., 380), he says: "I confess myself not as yet to have perceived why a *statute* transfer of personal property, is less efficacious in producing a transmutation of title, than a voluntary assignment; and *a previous voluntary assignment would, beyond all question, overreach a subsequent attachment of creditors.*"

(*Note.*—On the motion to dismiss the writ of Error, counsel for the plaintiff in error questioned this doctrine, (although it was not then involved): and, notwithstanding these and other clear and un-

usually positive expressions of Justice Story, they cited extracts from him (§§ 325, 390, 549, 550) as in strange opposition thereto. But the contexts disprove any such inconsistency, and show that those extracts have no application to this question. Thus § 325 supposes a foreign attachment before, and independently of, any transfer. So §§ 549, 550 have under consideration only the jurisdiction of Courts *loci rei sitae* over movables of non-residents by proceedings *quasi in rem*, and their effect as against such owners. Accordingly, title is assumed, and the question now under consideration, of a previous transfer, and of a conflict of laws respecting the state of the title, is not considered or had in view. The same is true of § 590 et seq. And in § 390, the learned commentator, after considering the case of Oliver v. Towns, (14 Martin's Rep., 102), and conceding the (undoubted) power of a State, *by legislation*, to reject this established doctrine of international law, proceeds to doubt whether any Court should reject it, and to regard the decision in that case as entirely inconsistent with this doctrine, which he so steadily maintains.)

(*b.*) When extra-territorial effect has been denied to assignments *in invitum*, it has been by distinguishing them from voluntary assignments.

In Ogden v. Sumners, (ante) this Court said (6 Cond. Rep., p. 529, 530): "I do not here speak of assignees, or rights created under the bankrupt's own deed; those stand on a different ground, and do not affect this question."

In Holmes v. Remsen, (ante) Platt, J., says (p. 265): "I do not mean, however, to suggest a doubt but that, independent of the statutory transfer, a *bona fide* assignment, for a valuable consideration, or for payment of

debts, freely made by such foreign creditor himself, would be valid against a subsequent attachment here; nor do I mean to question the settled principle of national jurisprudence by which the succession to and disposition of personal property is regulated by the law of the owner's domicil. * * In the impressive language of Lord Loughborough, let it be re-echoed across the Atlantic that these rights have *here* been long settled in principle and laid up amongst our acknowledged rules of jurisprudence."

In Johnson v. Hunt, (ante), says Cowen, J.: "There is a marked distinction between a voluntary conveyance of property by the owner, and a conveyance by operation of law, in cases of bankruptcy, *in invitum*. Laws cannot force the will," and "their statuable conveyance cannot operate upon any subject but what is within their territory. This makes a solid distinction between a voluntary conveyance and an involuntary legal conveyance."

In Milne v. Morton, (ante), says Tilghmam, Ch. J.: "If Topham had made an assignment of his property, in the hands of the garnishee, the case would not have admitted of a moment's speculation. This assignment, however, was not made by Topham, but by certain Commissioners appointed by the Lord Chancellor," and "an assignment by *law* has no legal obligation out of the territory of the law maker." And says Yeates, J.: "Effect is given to the fair assignment of the bankrupt himself, because it is the spontaneous act of the party, * * after which his interest therein necessarily ceases, and is no longer subject to an attachment."

In Hoyt v. Thompson, says Paige, J., (p. 352): 'Voluntary assignments stand upon entirely different principles from involuntary legal assignments. * * A

voluntary conveyance by a party, made according to the law of his domicil, will pass his personal estate whatever may be its locality, abroad as well as at home."

(*c.*) This doctrine has often been applied by the Courts of different States.

In Whipple v. Thayer (ante), a citizen of Rhode Island attached property in Massachusetts, which another citizen of Rhode Island had previously assigned, by an assignment, valid under the laws of Rhode Island, but invalid under the laws of Mass.; and the assignment prevailed. Ch. J. Shaw said: "Without, at present, deciding the more general question, whether this assignment, made by the owner of property, in a mode conformable to the laws of the place of his domicil, would be good against a subsequent attachment made by a citizen of this State, the Court (Putnam, Wilds and Morton, J. J.,) are all of opinion that, as against a citizen of Rhode Island the assignment was good."

The same was held in Daniels v. Willard, 16 Pick., 36; and also in Burlock v. Taylor, 16 Pick., 335, where the question was between a New York attaching creditor and a New York assignee, under an assignment valid in New York, but invalid in Massachusetts; and the assignee's title prevailed.

So in Rhode Island Central Bank v. Danforth, 14 Gray (Mass.), 123, a chattel mortgage of property in Massachusetts, made between two citizens of Rhode Island and valid there, without delivery, was held valid as against an attachment by another citizen of Rhode Island.

Note.—In Lanfear v. Sumner, 17 Mass., 110, a conflict of laws did not appear, and this question was not under consideration.

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In Blake v. Williams, 6 Pick., 286, Ch. J. Parker affirms the doctrine, and explains Ingraham v. Geyer.

In Van Buskirk v. Hartford Fire Ins. Co., 14 Conn., 114; 583, a New York citizen assigned a claim against the Insurance Company, and by the law of New York such assignment was complete without notice to the debtor, but by the law of Connecticut it was incomplete as against the assignor's creditors; and the plaintiff, also a New York citizen, before such notice was given, attached the debt; and the assignment prevailed.

In Sanderson v. Bradford, 10 N. Hamp. 260, the question was between a foreign attachment of a debt to a citizen of Massachusetts, who had assigned it by an assignment, valid by the laws of Massachusetts, but invalid by that of New Hampshire; and the assignment prevailed.

In Noble v. Smith, 6 R. I., 446, a New York assignment, valid there to transfer a debt without notice, prevailed over a subsequent attachment by a New York citizen, of a debt in Rhode Island, though levied before notice.

Note.—In Ward v. Morrison, 25 Ver., 593, the rule in Van Buskirk v. Hartford Fire Insurance Co. (ante), was recognized, and the case distinguished from that one, because it did not appear that the claimant was a citizen of New York, nor that the law of that State differed from that of Vermont.

Emerson v. Partridge, 27 Ver., 8, was an attachment by a Vermont creditor of a note made in Vermont, and the attachment was sustained: But the Court ruled that if the note had been made in Massachusetts, or payable there, the law of Massachusetts would have governed, and the debt not been subject to the attachment.

(*d.*) The United States Circuit Courts have applied this doctrine, and at an early day.

In Bholen v. Cleveland, 5 Mason, 175, a Pennsylvania debtor made an assignment, valid by the law of that State, of goods in Massachusetts, and before the assignee got possession, a Pennsylvania creditor attached them: and the assignment prevailed. Says Justice Story: "The whole controversy turns upon the single point, where was the property in the goods at the time the trustee process was served." "The plaintiffs, as well as Evans, are citizens of the State of Pennsylvania. Their rights are, therefore, to be judged of by the laws of that State." "General assignments, of this nature, in favor of creditors, if *bona fide*, are valid by the law of that State, to pass the property contained therein." "The assignment worked an immediate transfer of the ownership." "At the time of the service of the trustee process, the goods were no longer the property of the Holdballs. They had transferred them to the plaintiffs."

In Caskie v. Webster, 2 Wallace, Jr., 131. a Virginia assignment, valid by the law of that State, of a debt from a resident of Pennsylvania, prevailed over an attachment in Pennsylvania by a Pennsylvania creditor. Justice Grier, after assuming the assignment to be void by the law of Pennsylvania, said: "A voluntary assignment of it (the debt) by the creditor, which is valid by the law of his domicil * * will operate as a transfer of the debt, which should be regarded in all places. In America, bankrupt or involuntary assignments have not been considered as subject to this rule. But I know of no other established exception to the general rule, that a transfer of personal property, valid by the law of the owner's domicil, is valid everywhere." The learned Justice then refers, with disapproval, to cases where an exception has been made in favor of citizens of the local

situation, and says they "are not binding as authority beyond the States in which they were made."

(*e.*) Thus it appears, that the doctrine, as above qualified, is a time-honored and settled doctrine. Burrill on Assignments, 2d ed., 370, after reviewing numerous cases, says: "As against citizens of the State, where the assignment was made, the rule appears to hold without qualification, that an assignment, valid by the laws of the State in which it is made, is valid everywhere." And even the exception in favor of citizens of the local situation, has been made in but few cases, and has met with great disfavor, as dictated by a narrow policy, and at war with the general doctrine, so necessary to commerce. (Ante.)

V. Had the question between these parties been tried in Illinois, the Courts there should have determined the effect of Bates's sale by the law of his domicil; and for aught that appears, would have so determined it.

(*a.*) That the Illinois Courts, in such case, *should have* applied the New York law to the sale by Bates, fully appears from Point IV. And it is worthy of note, that the cases cited under that Point, were in the Courts of the local situation, and between vendees, or assignees, and attaching creditors; and that, when the sale was voluntary, the foreign law (that of the owner's domicil) prevailed.

Before the New York Courts, the general doctrine was conceded, by the counsel for plaintiff in

error, to be that the law of the owner's domicil, governs sales and dispositions of movables; but where the law of the local situation prescribes a different law of sales and dispositions, this was claimed as an exception to such general doctrine.

Now, that Courts of the local situation, when applying the foreign laws, do so only as a matter of comity, and in obedience to this doctrine of international law, and the necessities of commerce, which dictated it; and therefore that such Courts *may* make their own law supreme, and thus reject such doctrine, is not questioned. But the mischief of the claimed exception is that it is as broad as the rule. For this doctrine is applicable only when the law of the local situation conflicts with that of the owner's domicil: And therefore to admit the doctrine when it is not thus applicable, but to reject it whenever such conflict exists, and occasion is thus presented for its application, would be to reject it *in toto*—to admit it in theory, but to reject it in practice.

(*b.*) For aught that appears on the record, or appeared to the New York Courts, this doctrine of international and commercial law prevails in Illinois, as in New York and generally throughout the civilized world: And the Courts of New York were bound so to presume. (See Point X.)

VI. This decision that the New York law governed the sale was right for the further reason that the parties, as citizens of New York, were bound by its laws

(*a.*) In several of the cases cited under Point IV this reason was applicable, and was recognized as conclusive. Ex. gr., says Storrs, J., in Van Buskirk *v.* Hartford Fire Insurance Company (ante): "The inhabitants and citizens of a State are certainly parties to the laws of that State in such a sense that they are bound by the operation of those laws in transactions which there take place."

This also fully accords with the settled doctrine of this Court, that a discharge under the Bankrupt Laws of a State, is valid as against the citizens of that State, though suing in the Courts of another State.

Indeed, the principle that the citizens of a State are thus bound by its laws, lies at the very foundations of government, and is axiomatic.

Judiciary Act, §§ 12, 13.

VII. By the law of sales of New York, the sale by Bates, being *bona fide*, was complete without delivery, and the title to the safes passed immediately to the owners.

(*a.*) This is the adjudged law of this case; and such has long been the common and statute law of the State.

(*b.*) Whether this Common Law rule be the best one, or the Civil Law rule, which prevails in Louisiana, or one of the various modifications of one or the other rule, which have been adopted in other States, is not a pertinent question: For each

State is free to adopt and enforce its own rule: And yet it may be worth noting, that in the most commercial States, changes in their laws of sales have been toward the Common Law rule as the one most favorable to commerce and involving the fewest hardships.

VIII. The decision that the law of New York governed the sale, and that by it the safes became the property of the defendants in error on November 3, *fully disposed of the case*, and prevented any inquiry into the law of sales of Illinois, or as to the subsequent suit against Bates and the process against his property: *And this decision was the only one under review in the Court of Appeals.*

(*a.*) That this decision thus disposed of the case is undeniable. Under it, the title of the defendants in error was complete on November 3. And this being so there was no further question for consideration. For a question about the effect of the sale, as governed by the Illinois law of sales, could only arise on the opposite theory, that the sale was governed by that law; and any possible question about the Illinois proceedings against Bates, could only arise on the further theory, that by that law, the safes were Bates's, as against creditors, and thus within reach of lawful process against his property.

(*b.*) That this decision thus disposed of the case, explains the absence, from the record, of any

finding of fact, as to what the Illinois law of sales was, or in relation to the suit and process. For this decision at the Circuit, prevented all need of inquiring into any such facts, and rendered them wholly immaterial, so long as the decision should stand. Thus, they were properly left for a new trial, in case such decision should be reversed, and any such facts thereby become material.

(*e.*) This decision was therefore the only one under review in the Court of Appeals. It disposed of the case at Circuit; it prevented every subsequent question based on an opposite theory; it rendered immaterial any facts on which any such subsequent question might depend; no such facts were found; the exceptions were only to this decision; the Court of Appeals could only review this decision; and its affirmance of it prevented its reaching any further question, though the record had presented it.

(*d.*) The Court, at Circuit, did not find as facts, what the Illinois law of sales was, as applicable to the sale by Bates, nor what effect such suit and process have in that State, in a suit like this, between other parties, and upon a question of previous ownership, nor any thing about their effect there. And this, of itself, entirely precluded the Court of Appeals from considering any question depending on any such facts. That Court only reviews questions of law, presented by specific exceptions, and upon facts specially found in the record brought there. It does not draw conclusions of fact from evidence; but every intend-

ment of fact is in favor of the judgment. The facts are presumed to support the judgment, and to accord with a right decision, unless the contrary distinctly appears. The appellant is bound to procure such a statement of facts, as will show necessarily, that the law is in his favor. (Smith *v.* Grant, 15 N. Y., 590, and cases cited; Ingersoll *v.* Bostwich, 22 N. Y., 425; Grant *v.* Morse, *ib.*, 323.)

IX. If it be supposed that the review by the Court of Appeals was not thus limited, but involved a consideration of the Illinois laws, and of the proceedings against Bates; then, its decision must also be supposed to have been in equal harmony with the laws of New York and of Illinois: For, as the record did not show to that Court what the Illinois laws, applicable to this case were (Point VIII), that Court could only presume that they were like those of New York: And therefore, whichever had prevailed, the result would be the same. And this illustrates and proves the last Point.

(*a.*) The laws of Illinois were matters of fact, to be proved like other facts; and in the absence of such proof, the Court of Appeals was bound to presume that the Illinois laws were like those of New York. This is familiar law. Thus, in Talbot *v.* Leman, 1 Cranch, 38, Ch. J. Marshall said: "It is not to be questioned that the laws of a foreign nation * * are not to be noticed by the Courts of other countries unless proved as

facts." And the same rule is universally applied to laws of sister States. But the record did not show to the Court of Appeals, what the Illinois laws were—what the two Illinois cases and the statutes, which were read in evidence, established the law there to be (Point VIII—*d*); and much less, what it was on any question which this particular case could possibly present. And therefore, as it did not appear that the Illinois laws differed from those of New York, but were presumptively the same, the decision harmonized equally with both, as they thus appeared to be.

(*b*) Therefore, if this Court were to decide that the Illinois law of sales should have prevailed in the Court of Appeals, and been administered there, not from mere comity, but by force of the Constitution, and were to send back the record for judgment accordingly, the Court of Appeals would still have to render the same judgment as before. So too, the judgment would have to be the same, if the record were sent back, with directions to give the Illinois suit and process whatever effect they have in Illinois. For, as the record would not present to that Court any *facts* as to the Illinois law of sales, or the effect there of such suit and process, and especially not, as applicable to this case, that Court would be prevented, by its own limited jurisdiction as an appellate Court, from giving any different judgment. And it would equally be prevented from sending the case down for a new trial at the Circuit, and to be brought back with new facts, so that it could render some different judgment: For that Court

is limited, as are the parties before it, to the record brought there, and to the facts thereby appearing: And however much it might regret that the case brought there had not been a different one, or that the record had not presented other facts, that regret would be unavailing.

X. And even if the Court of Appeals could have examined the evidence and drawn conclusions of fact therefrom, the result would still have been the same; for that evidence did not reach or apply to this case.

(*a.*) Martyn *v.* Dryden, 1 Gilm, 187, concerned real estate, and was between a judgment and an unrecorded deed, and turned upon the recording acts; and that case was therefore entirely irrelevant.

The other case of Burnell *v.* Robertson, 5 Gilm, 282, was more nearly relevant, for it was about a sale of chattels, and the effect of a sale, without delivery, as against creditors. But that case only showed what the Illinois law of sales was in such cases, and it did not present this question of a conflict of laws. It is true that the sale was in St. Louis, but it did not appear that the Missouri law of sales differed from that of Illinois, (and therefore it was presumptively the same), nor but what the owners, and also the attaching creditors, were citizens of Illinois. Accordingly, that case did not show what the law of Illinois was in such a case as this: And the Court of Appeals could

only presume that law to be like the law of New York; and that if this case, between New York citizens, and concerning a sale made by a New York citizen, and in New York, were pending in Illinois, the *lex domicillii* would there govern such sale.

Again, in Burnell *v.* Robertson, the vendor had and retained possession, and the decision was that such possession rendered the sale fraudulent and void, as against *bona fide* purchasers, and that attaching creditors stood on that footing: And the principle of the decision was thus stated. "Public policy requires that while personal chattels remain in the possession of the former owner, they should, as to third persons, be regarded as his." But this case is not like that one, nor within its principle; for the safes were not in Bates's possession, but in Stowell's, an adverse claimant. (p. 9.) And this distinction has been fully recognized in New York, (Nash *v.* Ely, 19 Wen., 523; Hanford *v.* Archer, 4 Hill, 299), as also in several other states. So that the Court of Appeals must still have presumed that the Illinois law, in this case of hostile possession by Stowell, was like that of New York.

As regards the Illinois Statutes, they only showed that property of non-residents was liable to process of attachment in suit against the owner, but those Statutes were irrelevant upon the question of ownership here presented.

As regards the "faith and credit" to be given to the suit and process against Bates, there was no evidence whatever as to what they had, by "law or usage," in Illinois, and much less, what they have there in a

suit like this between other parties, and upon a new question. And the Court of Appeals could therefore only presume that there, as in New York, the suit and judgment could only prove *the fact thereby adjudged of the debt against Bates*, and the process of attachment and execution only be regarded as *lawful process issued against Bates's property.*

(*b.*) Hence, if the decision of the Court of Appeals be supposed to have involved any question about the Illinois law of sales, or the effect of the proceedings there, then that Court may also be supposed to have determined such question conformably to Illinois laws, unless it can be fully maintained that the Court was bound to draw conclusions of fact from evidence, and then that it must necessarily have concluded from that evidence, (1st), that the general doctrine that sales of movables are governed by the law of the owner's domicil, has been repudiated in Illinois; (2d), that such doctrine is rejected there, even in a case like this, where that law binds and governs both parties, and (3d), that by the Illinois law of sales, this sale was void for want of delivery, though Stowell wrongly held the safes as his—and that too, though neither such question was decided, involved, or considered, in the cases read in evidence.

Therefore, if this Court were to send back the record, as in the last Point supposed, and if it were also supposed that the Court of Appeals could draw conclusions of fact from evidence, or somehow direct them to be drawn, yet its decision

must remain the same unless the extraordinary conclusions of fact above stated should be got into the record.

XI. The decision of the Court of Appeals, being thus limited to the question of ownership at the time of the seizure, and consequently to the effect of the previous sale upon the title, the single question for review here is whether the determination of the effect of such sale, by the law of New York, and as against a citizen of New York, involved a denial of any Constitutional right of such citizen.

(*a.*) That the decision was thus limited already appears, and hence, the only question presented to this Court is that above stated.

(*b.*) This question is stated as extending to *any* Constitutional right, because the record brought here neither shows to the defendants in error what "clause of the Constitution" "the construction of" was "drawn in question (U.S. Laws, 1789, Ch. 20, § 25,), nor what right was "specially set up or claimed * * under such clause." (Ib.)

But the Assignment of Errors, filed in this Court, states such clause as Sec. 1 of Art. IV, and such right as a justification under the Illinois proceedings. Therefore it would seem that this question above stated may be confined to this alleged right, and to that clause.

XII. Though the claim made here by the plaintiff in error has entitled him to a hearing in this Court, yet it cannot be "regarded as a ground of reversal" because it does not "appear on the face of the record" brought here that any right was "specially set up or claimed" under the clause of the Constitution alleged to have been violated. (U. S. Laws, 1789, Ch. 20, § 25.)

(*a.*) The allegations which the plaintiff in error makes here, by his assignment of errors, are certainly very broad, and so broad as to have gained him an audience in this Court: And if the record brought here only showed, as thus alleged, that the construction of Sec. 1 of Art. IV of the Constitution was drawn in question, and that some right specially set up or claimed under it was denied, then, if such denial were of an *actual* right so claimed, it would be ground of reversal. But the record shows nothing, and intimates nothing, of any right being thus set up or claimed, or of any question about the construction of such clause; and the plaintiff in error will search the record in vain therefor, and therefore is precluded by the law under which he comes here (ante) from claiming the alleged denial of any such right as a ground of reversal. And the record is not only thus barren, but it does not even show, as is here alleged, that the Illinois proceedings were claimed to be a justification: For the plea was not that those proceedings condemned the safes, as it were, or adjudged them to be Bates's, but only that the safes *were Bates's* and (being such) were seized *as his* under process in suit against *him*—thus leav-

ing the defence wholly to depend upon Bates's ownership at the time of the seizure; and very necessarily so, as has already been seen. Nor, when the Court at Circuit decided that the safes were not Bates's, but had passed to his vendees, and therefore were not liable to seizure under process against his property, did the plaintiff in error then claim, by any exception, that such decision upon the question of previous ownership, involved any question about the construction of any clause of the Constitution, or any denial of any Constitutional right or even any discredit of the subsequent attachment process; but only that such question of ownership should be determined by the Illinois law of sales.

Note.—If the Illinois proceedings were not thus pleaded in connection with Bates's alleged ownership and as depending upon it for their effect, but be supposed to have been pleaded as a justification, *per se* (as is alleged in the Assignment of Errors), then the plaintiff in error would make his case entirely parallel with that of Buck v. Colbath: And thus the dilemma is a fatal one, whichever horn be chosen.

XIII. The Illinois suit and process were not so proved as to entitle them to "full faith and credit" under Art. IV, Sec. 1 of the Constitution, nor were the Illinois decisions and statutes.

(*a.*) That Section provides that "Congress may by general laws prescribe the manner in which

such acts, records and proceedings shall be proved and the effect thereof." Accordingly, the Act of Congress of May 26, 1790, Ch. 11, was passed; and that Act, after prescribing *how* "such acts and proceedings shall be proved" (viz.: by attestation of the clerk and the seal of the Court,), proceeds to prescribe "the effect thereof" by declaring that "records and judicial proceedings, *authenticated as aforesaid*, shall have such faith and credit given to them in every Court within the United States as they have by law or usage in the Courts of the State from whence the said records are or shall be taken." But neither the suit and process, nor the decisions and statutes, were so proved, and therefore no question can be made *under this Act of Congress and the Constitution* as to their effect; for they were not entitled to any effect *under the same.*

If this Point be called technical, the answer is, that it is no more so than the Act of Congress: and that a party who would claim the benefit of that Act, must see to it, that he follows its provisions, on which it conditions that benefit.

(*b*) This aptly illustrates that the real question at issue was of previous ownership, and that it preceded, and was independent of, any possible question about the effect of the suit and process; and further, that such effect was not questioned; and yet further, that no question about the construction of § 1, Art. IV of the Constitution was raised. For otherwise, the plaintiff in error would not have failed so to prove such suit and process

as to have entitled him to claim their utmost effect.

What was done about proving the suit and process was the parties *admitted* that plaintiff in error brought suit against Bates upon a debt and got judgment for a certain sum and seized the safes as Bates's property, under process of attachment issued in that suit, and then sold them under execution issued on such judgment. And it did not even appear how the suit was commenced. As regards the decisions and statutes they were merely read in evidence from the printed volumes. Certainly, this was not the way to "question the construction of any clause of the Constitution," or to claim any effect of "public acts, records and judicial proceedings" under Art. IV, § 1, of the Constitution and the Act of May 26, 1790. And it proves, as does the entire record, *either* that the suit and process were regarded as having all the effect claimed for them, *or* that this case was so tried as to preclude a different result on an appeal.

XIV. If the Illinois Courts, or Legislature, had rejected the doctrine that sales of movables are governed by the law of the owner's domicil, and established the law of that State to be that its laws should govern all sales of movables within the State; and if, by its laws, the sale of November 3, was incomplete and invalid, as against creditors; and if these supposed facts had all appeared to the Court of Appeals, on the record;

then, the decision of that Court would have involved an actual conflict between such law of Illinois and the law of New York (that sales of movables are governed by the law of the owner's domicil, as against all but citizens of the local situation): But even then, its decision would not have violated any Constitutional right of the plaintiff in error.

(*a.*) In such case, the law of New York (adopting the general doctrine of international law on the subject) would certainly be as sacred under the Federal Constitution as the law of Illinois (in opposition to that doctrine). And the New York Courts could no more be required to administer the *lex loci rei sitæ* than the Illinois Courts to administer the *lex domicillii.* But whichever Court should first have jurisdiction of the question depending on such conflicting laws, would be free, under the Constitution, to be governed by its own laws, and to govern its own citizens thereby: And then, when its judgment should be rendered, that *judgment* would, by Const., Art. IV, § 1, be binding everywhere between the parties, on the question involved in it.

The New York Court would also have been free to administer its own law in such case, even if the plaintiff in error had been a citizen of Illinois; and thus, instead of being bound by the law of New York, had been able to claim the fullest benefit of the Illinois laws: For in such case, the conflict would be between the law of New York and that of Illinois and not with the Federal Constitution. Under the Judiciary Act,

(§12), such a suit, between citizens of different states, might be removed into this Court, (at Circuit), and thus, such conflict of laws be decided, not by the State Court, and its particular law, (common or statute), but by this Court, and the Common Law of the United States. But this very act, by thus limiting such right of removal to suits between citizens of different states, and by excepting (§ 13) suits "between a State and its citizens" from the exclusive jurisdiction of this Court over suits where a State is a party, fully recognizes the *fundamental and sovereign right of each State*, to govern its own citizens by its own laws, if those laws are only constitutional. So that, to deny the sovereign right of the New York Courts, in this case, to determine the effect of Bates's sale by the New York law of sales, instead of that of Illinois, would be to assert *either*, that the New York law of sales, *or*, the doctrine that sales of movables are governed by the law of the owner's domicil, as against citizens of the same State, *violates the Federal Constitution.*

That the Constitution is silent as to this and like questions, is however certain: and therefore the question, so brought before this Court, would be resolved, not as one of Constitutional law, but of international and commercial law: And that this Court, when occasion shall thus arise, will affirm the world-wide doctrine, that sales and dispositions of personal property, whether *inter vivos* or *post mortem*, are governed by the law of the owner's domicil, it cannot well be doubted. Nor should it be doubted, that this Court will then proclaim that doctrine, in all its beneficent fullness,

as a universal harmonizer of otherwise conflicting laws, and rebuke the selfish and narrow policy, which has led some State Courts to sacrifice the freedom of commerce, to a present and paltry interest of one of its citizens.

But whatever may be the fate of this international doctrine, or whatever may be thought of the New York law of sales, it cannot be questioned, that neither is prohibited by the Constitution; or that the New York Courts had supreme right to govern its own citizens, by its own laws, and to determine thereby the effect of Bates's sale. And therefore, the whole argument for the plaintiff in error, against the decision, that the safes were the property of the defendants in error, and were wrongly taken from them, narrows itself down to this—that the Illinois Court adjudged Bates to be a debtor of plaintiff in error to a certain amount, and issued general process against Bates's property, for its security and collection, and that under such process the property of these defendants in error was seized—to a defence which this Court condemned in Buck *v.* Colbath, and which would equally justify a seizure of any one else's property, and which no one would presume to maintain.

Note.—It is apparent, that any claim in this case to determine the liability of the safes to seizure by the supposed law of sales of Illinois, and to give effect to that law, on Constitutional grounds, would be equally applicable to every case of sale or disposition of personal property, whether *inter vivos* or *post mortem*, where the sale or will is not

executed conformably to the law of the local situation, and valid there. For, in any such case it would only be necessary to subject to general process the person's property who would be the owner, if such sale or will had not been made, and then, in like manner, claim that the title, and consequent liability to such process, must everywhere be determined, on Constitutional grounds, by the law of the local situation—and that too, though the Courts of the local situation have never had jurisdiction of the parties or the question. And therefore, to maintain such claim would be to maintain that the Constitution enforces the law of the local situation, and that the New York citizen, who dies leaving a will, valid by the laws of New York, and covering Ill. Cent. R. R. stock, is made intestate by the Federal Constitution, as to such stoc , and even in the Courts of New York, if his will be not executed as the local laws of Illinois require, and be not also valid there. Surely, if the claim here made by the plaintiff in error were well founded, its consequences would be appalling, and inter-state commerce be enslaved by the very Constitution which intended its greatest freedom.

XV. And thus it appears that the decision of the New York Court of Appeals comes before this Court, not only as dictated by a sacred principle of international law, but as guaranteed by the fundamental right of a State to adopt its own Commercial laws, and govern its own citizens thereby; and on the other hand, that the allegation of error in such decision, is founded upon gratuitous assumptions, and is itself pregnant with error.

(*a.*) Amongst these unfounded *assumptions* are the following:

(1st.) That the Illinois proceedings were pleaded as a justification;

(2d.) That those proceedings adjudged the question of ownership;

(3d.) That a right was set up or claimed under the Constitution;

(4th.) That any such right was denied;

(5th.) That the sale was invalid by the Illinois law of sales;

(6th.) That the Illinois law was that sales of movables are governed by the law of their local situation.

(*b.*) Amongst the *errors* involved in such allegation are the following:

(1st.) That a suit *in personam* for a debt, is a suit *in rem*;

(2d.) That the liability of property to seizure under general process in such a suit does not depend upon the property being that of the debtor;

(3d.) That such ownership and liability are not determined *aliunde* but by the judgment in debt and the fact of seizure;

(4th.) That the effect of a previous sale is not determined by the law of sales applicable to it;

(5th.) That the judgment in debt is conclusive, against the owner of the property, that it was the debtor's;

(6th.) That unless such judgment have this effect of concluding strangers upon a question not involved in it, the Federal Constitution is violated;